IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1929.

INTERNATIONAL SHOE COMPANY, Appellant, vs. STRATTON SHARTEL, Attorney-General, et al., Respondents.	No. 579. October Term, 1928.

MOTION OF INTERNATIONAL SHOE COMPANY TO FILE SUPPLEMENT TO PETITION FOR REHEARING.

International Shoe Company, appellant, respectfully represents:

That there is an irreconcilable conflict between the opinion in this case and the opinion in the case of MacAllen v. Massachusetts, decided by this Court May 27, 1929, which was after the petition for rehearing in this case was prepared, and appellant asks leave to file this, its supplement to its motion for rehearing, and presents as an additional

ground for rehearing the conflict between the two decisions, and respectfully submits the following:

1. In the case of International Shoe Company v. Shartel et al., this Court held,—that the annual franchise tax imposed by the State of Missouri upon appellant was a privilege (excise) and not a property tax, and giving the shares a specified value ($100.00 per share) by which the tax is measured, only affects the rate of tax on the privilege and does not operate to tax property or business without the state, deny it equal protection of the laws or take its property without due process. The effect of the statute, as construed, is to tax appellant on four times the admitted par value of its capital stock and surplus employed in Missouri, or tax appellant's capital stock and surplus employed in Missouri at a rate of four-twentieths of 1 per cent, which is four times the fixed statutory rate.

It will thus be seen that the Court held **that even though the effect of the tax statute is to levy the tax on $208,440,000.00** as the par value of its capital stock and surplus employed in Missouri, which is **four times the admitted par value** ($52,956,249.12)—**or at a rate of four-twentieths** of 1 per cent, **which is four times the statutory rate** (one-twentieth of 1 per cent)—**the statute is not in violation of the constitutional inhibition** against taxing property beyond the state, denying equal protection of the laws, or taking property without due process, **because the tax is an excise or privilege tax.**

2. This Court, in the case of MacAllen Company v. Massachusetts, held,—that though the tax under consideration was called an excise tax, and was levied on domestic corporations for the privilege of doing business within the state, measured by their net income, that **the effect of the statute was to tax interest on United States Bonds** and interest on the State Bonds of the State of Massachusetts which were, under its Constitution, exempt from taxation, and **for that reason was void because, in effect, it violated the Constitution** of the United States and of Massachusetts; and that what a tax is called does not determine its constitutionality, but what the tax does, its nature and effect, is the test. The Court reaffirmed its holding in the cases of Choctaw, Oklahoma, Ry. Co. v. Harrison, 235 U. S. 292, and G. H. & S. A. Ry. Co. v. Texas, 210 U. S. 217.

It will thus be seen that the Court held: **That if the effect of the excise or privilege tax is to tax property in violation of the Constitution, the statute is void—and it is not what the tax is called but its effect and practical operation that is to be considered,** and if in its application it violates the Constitution, it is void.

The two opinions cannot be reconciled, and we submit that the last decision, MacAllen v. Massachusetts, is based on sounder principle and longer established precedent and should be upheld, and the decision in this case set aside and a rehearing granted.

We respectfully ask that this supplement to the petition for rehearing be permitted to be filed and the error herein assigned be considered, in addition to those assigned in the petition for rehearing.

A copy of this motion has been delivered to counsel for appellees.

Respectfully submitted,

GUY A. THOMPSON,
FRANK A. THOMPSON,
JAMES D. WILLIAMSON,
R. E. BLAKE,
Counsel for Appellant.

I, James D. Williamson, counsel for the above-named International Shoe Company, do hereby certify that the foregoing supplement to the petition for rehearing in this cause is presented in good faith, and not for delay.

James D. Williamson,
Counsel for International Shoe Company.